

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

Houston, Texas

SHINTECH INCORPORATED

Employer

and

Case No. 16-RC-10822

**INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 564**

Petitioner

DECISION AND DIRECTION OF ELECTION

I. The Petition, Issue Presented, and Parties' Positions

The Petitioner seeks to represent all chemical operators in Plant 1 employed by the Employer at its Freeport, Texas facility and to exclude all office clerical employees, guards, professional employees, and supervisors as defined by the Act.¹ The Employer contends that chemical operators in Plant 2 and Plant 3, located at the same Freeport facility, must also be included in any unit found appropriate. Thus, the only issue at hand is whether the scope of the unit should include the chemical operators in Plant 2 and Plant 3.

At hearing, the parties agreed that irrespective of how the issue of unit scope is resolved, a unit consisting of only chemical operators is appropriate. Further, the parties stipulated to the

¹ At hearing, the parties agreed that "chemical operators," as they are referred to by the Petitioner, and "process technicians," as they are referred to by the Employer, are, in fact, one and the same. For purposes of consistency, I will refer to this group of employees as chemical operators throughout the Decision.

following exclusionary language: all other employees including office clerical, laboratory, professional, administrative, guards, watchmen, and supervisors as defined by the Act.

II. The Regional Director's Findings

I have considered the evidence adduced during the hearing and the arguments advanced by both parties. At hearing, the Union simply argued that Plant 1 constituted an appropriate unit and did not submit a brief; the Employer submitted a post-hearing brief. For the reasons set forth below, I find that any appropriate unit must include the chemical operators at Plant 2 and Plant 3 in addition to the chemical operators at Plant 1 and will direct an election accordingly. To lend a context to my discussion of the issues, I will first provide an overview of the Employer's operations and supervisory structure. Then, I will discuss the evidence regarding unit scope and the reasoning that supports my findings.

III. Overview of Employer's Operations and Supervisory Structure

The Employer manufactures polyvinyl chloride (herein PVC) for both domestic and foreign sale and employs approximately 174 employees at its Freeport facility. The employees at issue here work at Plant 1, Plant 2, or Plant 3. The facility also contains an administrative building, laboratory, and parts room. The ages of the plants vary: Plant 1 was built in 1974, Plant 2 between 1980 and 1981, and Plant 3 between 1989 and 1990. Other than the fact that the plants produce different grades of PVC, they are virtually identical in all other aspects. Plant 2 does, however, house the 900 unit, which receives the raw material used at all three plants.

Chemical operators at each plant work on one of four shifts. Each shift is made up of five chemical operators - except for Plant 2, which employs a sixth chemical operator assigned to the 900 unit - and a shift supervisor. Each plant has an assistant superintendent and a superintendent. The superintendent is the highest ranking official at the individual plants and

reports to the site manager, who oversees all three plants. The site manager reports to the vice-president of manufacturing. The parties stipulated that the shift supervisors, assistant superintendents, and superintendents are supervisors within the meaning of the Act because they have the authority to engage in one or more of the Section 2(11) indicia.

IV. Discussion and Analysis

As referenced above, the Petitioner seeks a unit consisting only of Plant 1 chemical operators, and the Employer argues that any appropriate unit must also include chemical operators from Plant 2 and Plant 3.

The Board has long held a single location unit is presumptively appropriate for collective bargaining. *D&L Transportation*, 324 NLRB 160 (1997); *J&L Plate*, 310 NLRB 429 (1993); *Bowie Hall Trucking*, 290 NLRB 41, 42 (1988). In determining whether the presumption has been rebutted, the Board considers various factors such as centralized control over daily operations and labor relations; similarity of employee skills, functions, and working conditions; degree of employee interchange; geographic separation; and bargaining history, if any. *New Britain Transportation Co.*, 330 NLRB 397 (1999); *Esco Corp.*, 298 NLRB 837, 839 (1990). The burden is on the party opposing the petitioned-for single facility unit to present evidence sufficient to overcome the presumption. *J&L Plate*, 310 NLRB 429 (1993).

After examining the factors listed above, I find that the Employer has presented sufficient evidence to rebut the presumptive appropriateness of a unit made up of strictly Plant 1 chemical operators.

A. Centralized Control Over Daily Operations and Labor Relations

The Employer's daily operations and labor relations all stem from the various departments located in its administrative building. This building contains the human resources

department, the safety department, the environmental department, the accounting department, and the traffic department. All of the aforementioned departments develop policy and procedure that affect Plants 1-3 in an identical manner. For example, the employee handbook, developed by the human resources department, is applicable to all chemical operators. Personnel records for Plants 1-3 are maintained in the administrative building. A singular maintenance department performs the maintenance work, including repairs, for all three plants, singular quality control department tests the product for all three plants, and all three plants utilize the same parts room.

Although each plant has its own immediate supervision, that supervision, in turn, reports to the site manager, who is responsible for all three plants. Interviews for applicants are conducted by a panel comprised of the superintendent who is hiring, a human resources representative, the site managers, and a representative from another plant or department; only the site manager and vice-president of manufacturing have the authority to hire (and fire) employees. All wage adjustments and promotion decisions are handled exclusively by the vice-president of manufacturing. Transfer, promotion, and training policies are the same for Plants 1-3.

This case is similar to *Eastman West*, 273 NLRB 610 (1984), wherein the Board considered pervasive centralized control of all labor relations and personnel matters in finding that the presumptive appropriateness had been rebutted.

B. B. Similarity of Employee Skills, Functions, and Working Conditions

Other than the 900 unit operator located in Plant 2, chemical operators at each of the three plants perform the same work depending on the unit to which they are assigned. All three plants are designed the same and contain the same equipment (other than the 900 unit). The job description, orientation, and responsibilities for chemical operators (other than the 900 unit) are not dependent on a specific plant.

Work shifts at all three plants, arranged by human resources, are exactly the same. All chemical operators are subject to the same wage scale, payment system, benefits, physical exams, and drug screening. Additionally, chemical operators at Plants 1, 2, and 3: wear identical uniforms, safety shoes, and personal protection equipment; use the same tools; fill out the same work-related forms; complete the same testing requirements in order to qualify to operate particular units; enter and exit the facility through the same gate; are subject to performance evaluations based on the same time periods and criteria; and follow identical evacuation plans. Finally, Employer social events, such as a picnic or golf tournament, are held on a facility-wide basis.

In *In re Dattco, Inc.*, 338 NLRB 49, 51 (2002), the Board looked at the uniform working conditions, functions, and skills of bus drivers and monitors in assessing a unit scope issue and determined that a multi-facility unit was the only appropriate unit. Here, similar to that case, no distinction between the skill set and working conditions exists between the chemical operators at Plant 1 and the chemical operators at Plants 2 and 3.

C. Degree of Employee Interchange

The Employer offered ample evidence of permanent interchange among the chemical operators and supervisors at all three plants over the years. Approximately 49 chemical operators have transferred from one plant to another. Indeed, when positions need to be filled, notices are often posted on the bulletin boards in all plants regardless of whether the available position is located in Plant 1, 2 or 3. *Purolator Courier Corp.*, 265 NLRB 659 (1982) (evidence of permanent interchange sufficient to warrant multi-location unit).

Temporary interchange of employees also occurs during a process known as “shutdown,” where maintenance is performed on a particular plant. During a shutdown, chemical operators

assist at the plant where the maintenance work is being done and report to a shift supervisor at that plant rather than their normal shift supervisor.

D. Geographic Separation

The Employer's Freeport facility is approximately 500 acres. The perimeter of the entire facility is surrounded by a chain link fence and there are no barriers inside the perimeter between Plants 1, 2, or 3. From the administrative building, Plant 3 is within a few hundred feet, Plant 2 is within 800 yards, and Plant 1 is within 1000 yards. Plant 1 is less than 1000 yards from Plant 2 and Plant 2 is less than 1000 yards from Plant 3. All three plants are a short bicycle ride from each other. In *Jerry's Chevrolet, Cadillac, Inc.*, 344 NLRB No. 87 (2005), the Board found that the Employer had rebutted the single facility presumption and, in doing so, pointed to the fact that no fences or barriers separated the three contiguous facilities. Such is the case here.

E. Bargaining History

No evidence of bargaining history was submitted by either party.

V. Summary

In view of the pertinent Board law and the evidence reflected in the record, I find that, based upon centralized control over daily operations and labor relations, similarity of employee skills, functions, and working conditions, degree of employee interchange, and geographic separation, the Employer has successfully rebutted the presumptive appropriateness of a single location unit and established that chemical operators at Plant 2 and 3 must be included in a unit with the chemical operators at Plant 1. The Petitioner's argument that the petitioned-for unit is an appropriate unit is without merit and, as such, I am ordering an election in the unit sought by the Employer.

VI. Conclusions and Findings

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The parties stipulate, and I find, that the Employer, a Delaware corporation, with its principal place of business in Houston, Texas and with a facility in Freeport, Texas, is engaged in the business of manufacturing polyvinyl chloride. During the past twelve months, a representative period, the Employer, in the course and conduct of its business operations, purchased and shipped to and from points outside the State of Texas goods and materials valued in excess of \$50,000, and, during the same time period, had gross sales in excess of \$500,000. During the same representative period, the Employer sold and shipped from its Freeport, Texas facility goods valued in excess of \$50,000 directly to points outside the State of Texas.
3. I find that the Petitioner claims to represent certain employees of the Employer.
4. I find, based on Case No. 16-RC-10800, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
6. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All chemical operators in Plants 1, 2, and 3 employed by the Employer at its Freeport, Texas facility.

EXCLUDED: All other employees including office clerical, laboratory, professional, administrative, guards, watchmen, and supervisors as defined by the Act.²

VII. Direction of Election

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the International Union of Operating Engineers, Local 754.

The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the

² As I have directed an election in a unit larger than that sought by the Petitioner, the Petitioner is hereby given 14 days to submit the additional evidence of showing of interest. These 14 days will be counted from the date of the decision, or, if applicable, from the date the Board denies any request for review of the unit scope findings in this decision.

designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Houston Resident Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Houston Resident Office, Mickey Leland Federal Building, Suite 1545, 1919 Smith Street, Houston, Texas 77002, on or before January 17, 2008. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at 713-209-

4890. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Houston Resident Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. ***Club Demonstration Services***, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

VIII. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EST, on January 24, 2008. You may also file the request for review electronically.

The National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with this Supplemental Decision and Order for guidance in doing so. Further guidance for E-filing may be found under E-Gov on the National Labor Relations Board website at <http://www.nlrb.gov>. On the home

page of the website, select the E-Gov tab and click on E-filing. Then select the NLRB office for which you wish to E-file your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

Dated January 10, 2008, at Fort Worth, Texas.

/s/ Martha Kinard

Martha Kinard, Regional Director
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